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RAL9-2000-0034US1

PATENT

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	:	Before the Examiner:
Gerken et al.	:	James S. McClellan
Serial No.: 09/672,435	:	Group Art Unit: 3627
Filed: September 28, 2000	:	
Title: CUSTOMER CHECKOUT	:	IBM Corporation
ACCELERATOR	:	P.O. Box 12915
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	:	Research Triangle Park, NC 27709

**REPLACEMENT APPEAL BRIEF THAT CONSOLIDATES ALL PREVIOUS
APPEAL BRIEFS AND IS IN CONFORMITY WITH 37 C.F.R. §41.37**

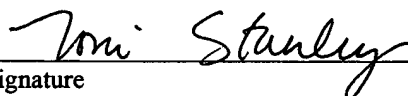
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I. REAL PARTY IN INTEREST

The real party in interest is International Business Machines, Inc., which is the assignee of the entire right, title and interest in the above-identified patent application.

CERTIFICATION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on October 26, 2005.


Signature

Toni Stanley
(Printed name of person certifying)

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-45 are pending in the Application. Claims 9, 10, 12-14, 31, 32 and 34-36 are allowed. Claims 1-5, 8, 11, 15-28, 33 and 37-45 stand rejected. Claims 1-5, 8, 11, 15-28, 33 and 37-45 are appealed.

IV. STATUS OF AMENDMENTS

Appellants have submitted an amendment, with a mailing date of August 16, 2004, amending claims 9 and 31 to be rewritten in independent form.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In one embodiment of the present invention, a method for accelerating sales transactions of customers in a retail store may comprise the act of reading a customer payment card number at a customer checkout accelerator. Specification, page 11, line 5 – page 12, line 2; Figure 4, step 402. The method may further comprise the act of determining a preapproval amount for the sales transaction. Specification, page 11, line 5 – page 12, line 2; Figure 4, step 404. The method may further comprise the act of displaying the preapproval sales transaction amount to the customer on the customer checkout accelerator for acceptance. Specification, page 12, line 3 – page 13, line 2; Figure 4, step 412. The method may further comprise the act of transmitting the preapproval amount to an external card services system for approval. Specification, page 12, line 3 – page 13, line 2; Figure 4, step 422. The method may further comprise the act of storing the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction. Specification, page

12, line 3 – page 13, line 2.

In another embodiment of the present invention, a method for accelerating sales transactions of customers in a retail store may comprise the act of reading a customer payment card number at a customer checkout accelerator. Specification, page 11, line 5 – page 12, line 2; Figure 4, step 402. The method may further comprise the act of determining a preapproval amount for the sales transaction. Specification, page 11, line 5 – page 12, line 2; Figure 4, step 404. The method may further comprise the act of displaying the preapproval sales transaction amount to the customer on the customer checkout accelerator for acceptance. Specification, page 12, line 3 – page 13, line 2; Figure 4, step 412. The method may further comprise the act of transmitting the preapproval amount to an external card services system for approval. Specification, page 12, line 3 – page 13, line 2; Figure 4, step 422. The method may further comprise the act of storing the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction. Specification, page 12, line 3 – page 13, line 2. The method may further comprise the act of scanning the customer payment card at a point of sales terminal. Specification, page 11, line 5 – page 12, line 2; Specification, page 13, lines 3-17; Figure 5, step 502. The method may further comprise the act of determining if there is an entry for the customer in the preapproval cache. Specification, page 13, lines 3-17; Figure 5, step 506. The method may further comprise the act of resuming the sales transaction at the point of sale terminal. Specification, page 13, lines 3-17; Figure 5, step 508.

In another embodiment of the present invention, a computer readable medium containing a computer program product for accelerating sales transactions of customers in a retail store may comprise program instructions that read a customer payment card number at a customer checkout accelerator. Specification, page 11, line 5 – page 12, line 2; Specification, page 17, lines 7-17; Figure 4, step 402. The computer program product may further comprise program instructions that determine a preapproval amount for the sales transaction. Specification, page 11, line 5 – page

12, line 2; Specification, page 17, lines 7-17; Figure 4, step 404. The computer program product may further comprise program instructions that display the preapproval sales transaction amount to the customer on the customer checkout accelerator for acceptance. Specification, page 12, line 3 – page 13, line 2; Specification, page 17, lines 7-17; Figure 4, step 412. The computer program product may further comprise program instructions that transmit the preapproval amount to an external card services system for approval. Specification, page 12, line 3 – page 13, line 2; Specification, page 17, lines 7-17; Figure 4, step 422. The computer program product may further comprise program instructions that store the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction. Specification, page 12, line 3 – page 13, line 2; Specification, page 17, lines 7-17.

In another embodiment of the present invention, a computer readable medium containing a computer program product for accelerating sales transactions of customers in a retail store may comprise program instructions that read a customer payment card number at a customer checkout accelerator. Specification, page 11, line 5 – page 12, line 2; Specification, page 17, lines 7-17; Figure 4, step 402. The computer program product may further comprise program instructions that determine a preapproval amount for the sales transaction. Specification, page 11, line 5 – page 12, line 2; Specification, page 17, lines 7-17; Figure 4, step 404. The computer program product may further comprise program instructions that display the preapproval sales transaction amount to the customer on the customer checkout accelerator for acceptance. Specification, page 12, line 3 – page 13, line 2; Specification, page 17, lines 7-17; Figure 4, step 412. The computer program product may further comprise program instructions that transmit the preapproval amount to an external card services system for approval. Specification, page 12, line 3 – page 13, line 2; Specification, page 17, lines 7-17; Figure 4, step 422. The computer program product may further comprise program instructions that store the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales

transaction. Specification, page 12, line 3 – page 13, line 2; Specification, page 17, lines 7-17. The computer program product may further comprise program instructions that scan the customer payment card at a point of sales terminal. Specification, page 11, line 5 – page 12, line 2; Specification, page 13, lines 3-17; Specification, page 17, lines 7-17; Figure 5, step 502. The computer program product may further comprise program instructions that determine if there is an entry for the customer in the preapproval cache. Specification, page 13, lines 3-17; Specification, page 17, lines 7-17; Figure 5, step 506. The computer program product may further comprise program instructions that resume the sales transaction at the point of sale terminal. Specification, page 13, lines 3-17; Specification, page 17, lines 7-17; Figure 5, step 508.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 5, 8, 11, 24 and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bigari (U.S. Patent No. 5,010,485) in view of Heady et al. (U.S. Patent No. 6,275,200) (hereinafter "Heady"). Claims 2-4 and 25-28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bigari in view of Heady in further view of Yanagawa et al. (U.S. Patent No. 5,535,407) (hereinafter "Yanagawa"). Claims 15-23 and 37-45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bigari in view of Heady and in further view of Terranova (U.S. Patent No. 6,098,879).

VII. ARGUMENT

A. Claims 1, 5, 8, 11, 24 and 33 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Bigari in view of Heady.

The Examiner has rejected claims 1, 5, 8, 11, 24 and 33 under 35 U.S.C. §103(a) as being unpatentable over Bigari in view of Heady. Paper No. 17, page 3. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. Bigari and Heady, taken singly or in combination, do not teach or suggest the following claim limitations.

- a. Claims 1 and 24 are patentable over Bigari in view of Heady.

Appellants respectfully assert that Bigari and Heady, taken singly or in combination, do not teach or suggest "storing the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction" as recited in claim 1 and similarly in claim 24. The Examiner states:

Bigari fails to expressly disclose storing the preapproval amount in a preapproval cache at a point of sales terminal. After inputting the preapproval amount via voucher reader 34, Bigari is silent as to where or how the preapproval amount is stored in anticipation of processing by the point of sale terminal. Heady teaches the use of a point of sales terminal (310) that includes a processor (410) that further comprises cache memory (see column 5, lines 20-25) that assists in executing software routines. Paper No. 17, page 4.

Appellants respectfully traverse that Bigari and Heady, taken in combination, teach the above-cited claim limitation. The Examiner is mistaken that Bigari teaches storing a preapproval amount at a point of sales terminal. Bigari instead teaches a payment voucher apparatus (Figure 1) that receives both the account identification data of a member charge card and the maximum charge amount by the host institution. Column 7, lines 49-51. Bigari further teaches that the host institution determines whether the correlated customer account has available credit line funds at least equal to the maximum charge amount. Column 7, lines 53-56. Bigari further teaches that if such funds are available, the host institution issues an approval status signal and reserves or "holds" funds from the customer account equal to the approved maximum charge amount. Column 7, lines 56-60. Bigari further teaches that if the maximum charge amount was approved, microprocessor 12 stores the maximum charge amount. Column 8, lines 6-7. Bigari further teaches that generating a voucher that includes both account identification data as well as the maximum charge amount permitted. Column 8, lines 8, lines 10-20. However, Bigari further teaches that the

customer then endorses the voucher, still at the location remote from the point of purchase station. Column 4, lines 19-22. Hence, Bigari teaches storing a maximum charge amount at a location remote from the point of purchase station. Bigari does not teach storing a maximum charge amount at a point of sale terminal as asserted by the Examiner.

Furthermore, Heady does not teach storing the approval amount in a preapproval cache at a point of sales terminal. There is no language in Heady that teaches storing an approval amount. Appellants performed a search of the term "approval" and were unable to identify these terms or any variations thereof in Heady. Further, there is no language in Heady that teaches storing an approval amount in a preapproval cache at a point of sales terminal.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1 and 24, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

- b. Claims 5, 8, 11 and 33 are patentable over Bigari in view of Heady for at least the reasons claims 1 and 24 are patentable over Bigari in view of Heady.

Claims 5, 8 and 11 recite combinations of features including the combinations recited in claim 1 and thus are patentable over Bigari in view of Heady for at least the reasons claim 1 is allowable. Further, claim 33 recites combinations of features including the combinations in claim 24 and thus is patentable over Bigari in view of Heady for at least the reasons claim 24 is allowable.

2. The Examiner has not presented any objective evidence or source of motivation for combining Bigari with Heady.

A *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must

provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that Bigari does not teach to store an approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction, as recited in claim 1 and similarly in claim 24. Paper No. 17, page 4. The Examiner's motivation for modifying Bigari with Heady to store an approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction is "because providing cache for a processor allows the processor to operate more efficiently and at a higher speed because cache memory serves as a high-speed local memory source." Paper No. 17, page 4. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

The Examiner has not presented a source for his motivation for modifying Bigari with Heady. The Examiner simply states "because providing cache for a processor allows the processor to operate more efficiently and at a higher speed because cache memory serves as a high-speed local memory source" as motivation for modifying Bigari with Heady to store an approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction. The motivation to modify Bigari with Heady must come from one of three possible sources: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998). The Examiner has not provided any evidence that his motivation comes from any of these sources. Instead, the Examiner

is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1, 5, 8, 11, 24 and 33. *Id.*

Furthermore, the Examiner's motivation is not a motivation as to why one of ordinary skill in the art with the primary reference (Bigari) in front of him would have been motivated to modify the primary reference (Bigari) with the teachings of the secondary reference (Heady). The motivation does not address as to why one of ordinary skill in the art would modify Bigari to store an approval amount in a preapproval cache at a point of sales terminal. The Examiner has not explained how installing a cache memory to improve the efficiency of the processor is related to storing an approval amount in a preapproval cache at a point of sales terminal. Instead, the Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner must provide objective evidence as to why one of ordinary skill in the art with Bigari in front of him, which teaches processing charge vouchers against charge card accounts administered by a host institution that issues an approval/disapproval to a merchant for a proposed transaction (Abstract of Bigari), would have been motivated to modify Bigari with Heady, which teaches an apparatus for controlling add-on equipment, such as an electronic display, with a guest controller transparently linked to an existing host computer system (column 3, lines 21-24 of Heady). *See In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating to provide cache for a processor to allow the processor to operate more efficiently and at a higher speed is not evidence for combining Bigari with Heady. *See Id.* Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1, 5, 8, 11, 24 and 33. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

As a result of the foregoing, Appellants respectfully assert that the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1, 5, 8, 11, 24 and 33. M.P.E.P. §2143.

- B. Claims 2-4 and 25-28 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Bigari in view of Heady and in further view of Yanagawa.

The Examiner has rejected claims 2-4 and 25-28 under 35 U.S.C. §103(a) as being unpatentable over Bigari in view of Heady and in further view of Yanagawa. Paper No. 17, page 4. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. Bigari, Heady and Yanagawa, taken singly or in combination, do not teach or suggest claims 2-4 and 25-28.

Appellants respectfully assert that Bigari, Heady and Yanagawa, taken singly or in combination, do not teach or suggest "the act of transmitting the preapproval amount from the customer checkout accelerator to a store controller" as recited in claim 2 and similarly in claim 25. Appellants further assert that Bigari, Heady and Yanagawa, taken singly or in combination, do not teach or suggest "placing an entry in a preapproval database if the external card services system approves the transaction amount" as recited in claim 3 and similarly in claim 26. Appellants further assert that Bigari, Heady and Yanagawa, taken singly or in combination, do not teach or suggest "notifying a point of sales terminal of the approval amount" as recited in claim 4 and similarly in claim 27. Appellants further assert that Bigari, Heady and Yanagawa, taken singly or in combination, do not teach or suggest "program instructions that determine if the payment card is one or more of a credit card, a debit card, a customer loyalty card, an electronic/Internet wallet or an electronic gift certificate" as recited in claim 28.

The Examiner has not cited to any passage in either Bigari, Heady or Yanagawa as teaching any of the above-cited claim limitations. The Examiner is reminded that in order to establish a *prima facie* case of obviousness, the Examiner must present a prior art reference (or reference when combined) that teach or suggest all the claim limitations. M.P.E.P. §2143. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. §2142. Since the Examiner has not presented any evidence that either Bigari, Heady or Yanagawa teach any of the above-cited claim limitations, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2-4 and 25-28. M.P.E.P. §2142.

2. Claims 2-4 and 25-28 are patentable over Bigari in view of Heady and in further view of Yanagawa for at least the reasons stated in Section A.

Claims 2-4 and 25-28 recite combinations including the combinations of claims 1 and 24, respectively, and hence are patentable over Bigari in view of Heady and in further view of Yanagawa for at least the reasons stated in Section A.

3. The Examiner has not presented any objective evidence or source of motivation for combining Bigari and Heady with Yanagawa.

As stated above, a *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614,

1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that Bigari in view of Heady does not teach transmitting the preapproval amount from a customer checkout accelerator to a store controller, as recited in claim 2 and similarly in claim 25. Paper No. 17, page 4. The Examiner's motivation for modifying Bigari and Heady with Yanagawa to transmit the preapproval amount from a customer checkout accelerator to a store controller is "because store controllers serve as a processing hub for a plurality of POS terminal, wherein decreasing the amount of processing power and memory storage capacity required by the POS terminals." Paper No. 17, page 4. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

The Examiner has not presented a source for his motivation for modifying Bigari and Heady with Yanagawa. The Examiner simply states "because store controllers serve as a processing hub for a plurality of POS terminal, wherein decreasing the amount of processing power and memory storage capacity required by the POS terminals" as motivation for modifying Bigari and Heady with Yanagawa to transmit the preapproval amount from a customer checkout accelerator to a store controller. The motivation to modify Bigari and Heady with Yanagawa must come from one of three possible sources: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998). The Examiner has not provided any evidence that his motivation comes from any of these sources. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 2-4 and 25-28. *Id.*

Furthermore, the Examiner's motivation is not a motivation as to why one of ordinary skill in the art with the primary reference (Bigari) in front of him would have been motivated to modify Bigari with the teachings of a secondary reference (Yanagawa). The motivation does not address as to why one of ordinary skill in the art would modify Bigari to transmit the preapproval amount from a customer checkout accelerator to a store controller. The Examiner has not explained how decreasing the amount of processing power and memory storage capacity (Examiner's motivation) is related to transmitting a preapproval amount from a customer checkout accelerator to a store controller. Instead, the Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner must provide objective evidence as to why one of ordinary skill in the art with Bigari in front of him, which teaches processing charge vouchers against charge card accounts administered by a host institution that issues an approval/disapproval to a merchant for a proposed transaction (Abstract of Bigari), would have been motivated to modify Bigari and Heady with Yanagawa, which teaches processing transactions at a high speed, while avoiding the occurrence of transactional risk borne by stores or banks (column 2, lines 37-39 of Yanagawa). *See In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating to decrease the amount of processing power and memory storage capacity is not evidence for combining Bigari and Heady with Yanagawa. *See Id.* Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 2-4 and 25-28. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

As a result of the foregoing, Appellants respectfully assert that the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2-4 and 25-28. M.P.E.P. §2143.

- C. Claims 15-23 and 37-45 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Bigari in view of Heady and in further view of Terranova.

The Examiner has rejected claims 15-23 and 37-45 under 35 U.S.C. §103(a) as being unpatentable over Bigari in view of Heady and in further view of Terranova. Paper No. 17, page 5. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. Bigari, Heady and Terranova, taken singly or in combination, do not teach or suggest the following claim limitations.
 - a. Claims 16, 21, 38 and 43 are patentable over Bigari in view of Heady and in further view of Terranova.

Appellants respectfully assert that Bigari, Heady and Terranova, taken singly or in combination, do not teach or suggest "creating a record of any additional items added to the sales transaction; appending the additional items record to a preapproval database entry for the sales transaction" as recited in claim 16 and similarly in claims 21, 38 and 43. The Examiner does not cite any passage in either Bigari, Heady or Terranova as teaching the above-cited claim limitation. Upon review of the references, Appellants respectfully assert that none of the references teach or suggest the above-cited claim limitation. The Examiner bears the initial burden and must submit objective evidence and not rely on his own subjective opinion in support of a *prima facie* case of obviousness. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). Since the Examiner has not provided any evidence that Bigari, Heady and Terranova, taken singly or in combination, teach or suggest the above-cited claim limitation, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 16, 21, 38 and 43. M.P.E.P. §2143.

- b. Claims 17, 22, 39 and 44 are patentable over Bigari in view of Heady and in further view of Terranova.

Appellants further assert that Bigari, Heady and Terranova, taken singly or in combination, do not teach or suggest "the act of reading the additional items record into a sales transaction record at a point of sale terminal" as recited in claim 17 and similarly in claims 22, 39 and 44. The Examiner does not cite any passage in either Bigari, Heady or Terranova as teaching the above-cited claim limitation. Upon review of both references, Appellants respectfully assert that none of the references teach or suggest the above-cited claim limitation. The Examiner is reminded that the Examiner bears the initial burden and must submit objective evidence and not rely on his own subjective opinion in support of a *prima facie* case of obviousness. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). Since the Examiner has not provided any evidence that Bigari, Heady and Terranova, taken singly or in combination, teach or suggest the above-cited claim limitation, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 17, 22, 39 and 44. M.P.E.P. §2143.

- c. Claims 18 and 40 are patentable over Bigari in view of Heady and in further view of Terranova.

Appellants further assert that Bigari, Heady and Terranova, taken singly or in combination, do not teach or suggest "updating a vendor-based tracking database to bill the vendor for displaying a vendor advertisement on the customer checkout accelerator when the approval from the external card services system is approved" as recited in claim 18 and similarly in claim 40. The Examiner takes Office Notice that it is well known in the art to track advertisements for billing vendors. Paper No. 17, page 5. Appellants respectfully traverse the assertion that it is well known in the art to update a vendor-based tracking database to bill the vendor for displaying a vendor advertisement on the customer checkout accelerator when the approval from the external card services system is approved. Appellants had requested the Examiner to provide a reference that teaches the above-cited claim limitation pursuant to M.P.E.P. §2144.03. The Examiner has never provided such a reference. Appellants further

note that the Examiner must consider all words in a claim, e.g., "when the approval from the external card services system is approved", "updating a vendor-based tracking database," in judging the patentability of claims 18 and 40 against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); M.P.E.P. §2143.03. Therefore, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 18 and 40. M.P.E.P. §2143.

Furthermore, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Bigari to update a vendor-based tracking database to bill the vendor for displaying a vendor advertisement on the customer checkout accelerator when the approval from the external card services system is approved. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner does not provide any motivation for modifying Bigari in such a manner. This is insufficient to support a *prima facie* case of obviousness. Consequently, the Examiner has not provided a *prima facie* case of obviousness in rejecting claims 18 and 40. *Id.*

Furthermore, Appellants respectfully assert that the Examiner's use of Official Notice is inappropriate. The Examiner is only to use Official Notice for facts asserted to be well-known or to be common knowledge in the art that are capable of instant and unquestionable demonstration as being well-known. *In re Ahlert*, 424 Fd.2d 1088, 1091, 165 U.S.P.Q. 418, 420 (C.C.P.A. 1970); M.P.E.P. § 2144.03. In this case, the facts asserted to be well-known or to be common knowledge in the art are not capable of instant and unquestionable demonstration as being well-known. Further, it is not appropriate for the Examiner to take Official Notice of facts without citing a prior art reference where the facts asserted to be well-known are not capable of instant and unquestionable demonstration as being well-known. *In re Ahlert*, 424 Fd.2d at 1091, 165 U.S.P.Q. 420-21; See also *In re Grose*, 592 Fd.2d 1161, 1167-68, 201 U.S.P.Q. 57, 63 (C.C.P.A. 1979). Further, it is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as a

principle evidence upon which a rejection was based. *In re Zurko*, 258 F.3d 1379, 1385, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001). Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 18 and 40.

- d. Claims 19 and 41 are patentable over Bigari in view of Heady and in further view of Terranova.

Appellants further assert that Bigari, Heady and Terranova, taken singly or in combination, do not teach or suggest "configuring a selection of additional categories of items to be displayed on the customer checkout accelerator based on customer preferences wherein some or all of the categories of items can be made available through a hyperlink to one or more Internet web sites; and storing the category selections in a customer loyalty database that is maintained by the retail store" as recited in claim 19 and similarly in claim 41. The Examiner does not cite any passage in either Bigari, Heady or Terranova as teaching the above-cited claim limitation. Upon review of both references, Appellants respectfully assert that none of the references teach or suggest the above-cited claim limitation. The Examiner is reminded that the Examiner bears the initial burden and must submit objective evidence and not rely on his own subjective opinion in support of a *prima facie* case of obviousness. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). Since the Examiner has not provided any evidence that Bigari, Heady and Terranova, taken singly or in combination, teach or suggest the above-cited claim limitation, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 19 and 41. M.P.E.P. §2143.

- e. Claims 23 and 45 are patentable over Bigari in view of Heady and in further view of Terranova.

Appellants further assert that Bigari, Heady and Terranova, taken singly or in combination, do not teach or suggest "updating a vendor-based tracking database to bill the vendor for displaying on the customer checkout accelerator a vendor advertisement for merchandise that can be made available through a hyperlink to the

vendor's Internet web site when the approval from the external card services system is approved" as recited in claim 23 and similarly in claim 45. The Examiner takes Office Notice that it is well known in the art to track advertisements for billing vendors. Paper No. 17, page 5. Appellants respectfully traverse the assertion that it is well known in the art to update a vendor-based tracking database to bill the vendor for displaying on the customer checkout accelerator a vendor advertisement for merchandise that can be made available through a hyperlink to the vendor's Internet web site when the approval from the external card services system is approved. Appellants respectfully request the Examiner to provide a reference that teaches the above-cited claim limitation pursuant to M.P.E.P. §2144.03. Appellants further note that the Examiner must consider all words in a claim, e.g., "when the approval from the external card services system is approved", "updating a vendor-based tracking database," in judging the patentability of claims 18 and 40 against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); M.P.E.P. §2143.03. Therefore, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 23 and 45. M.P.E.P. §2143.

Furthermore, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Bigari to update a vendor-based tracking database to bill the vendor for displaying on the customer checkout accelerator a vendor advertisement for merchandise that can be made available through a hyperlink to the vendor's Internet web site when the approval from the external card services system is approved. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner does not provide any motivation for modifying Bigari in such a manner. This is insufficient to support a *prima facie* case of obviousness. Consequently, the Examiner has not provided a *prima facie* case of obviousness in rejecting claims 23 and 45. *Id.*

Furthermore, Appellants respectfully assert that the Examiner's use of Official Notice is inappropriate. The Examiner is only to use Official Notice for facts asserted

to be well-known or to be common knowledge in the art that are capable of instant and unquestionable demonstration as being well-known. *In re Ahlert*, 424 Fd.2d 1088, 1091, 165 U.S.P.Q. 418, 420 (C.C.P.A. 1970); M.P.E.P. § 2144.03. In this case, the facts asserted to be well-known or to be common knowledge in the art are not capable of instant and unquestionable demonstration as being well-known. Further, it is not appropriate for the Examiner to take Official Notice of facts without citing a prior art reference where the facts asserted to be well-known are not capable of instant and unquestionable demonstration as being well-known. *In re Ahlert*, 424 Fd.2d at 1091, 165 U.S.P.Q. 420-21; See also *In re Grose*, 592 Fd.2d 1161, 1167-68, 201 U.S.P.Q. 57, 63 (C.C.P.A. 1979). Further, it is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as a principle evidence upon which a rejection was based. *In re Zurko*, 258 F.3d 1379, 1385, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001). Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 23 and 45.

2. Claims 15-23 and 37-45 are patentable over Bigari in view of Heady and in further view of Terranova for at least the reasons stated in Section A.

Claims 15-23 and 37-45 recite combinations including the combinations of claims 1 and 24, respectively, and hence are patentable over Bigari in view of Heady and in further view of Terranova for at least the reasons stated in Section A.

3. The Examiner has not presented any objective evidence or source of motivation for combining Bigari and Heady with Terranova.

As stated above, a *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and

particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that Bigari in view of Heady does not teach to display on a customer checkout accelerator a selection of special promotional merchandise that can be added to the sales transaction where some or all of the promotional merchandise can be made available through a hyperlink to one or more Internet web sites, as recited in claim 15 and similarly in claim 37. Paper No. 17, page 5. The Examiner's motivation for modifying Bigari and Heady with Terranova to display on a customer checkout accelerator a selection of special promotional merchandise that can be added to the sales transaction where some or all of the promotional merchandise can be made available through a hyperlink to one or more Internet web sites is "because utilizing the customer display to advertise to customers will increase the likelihood of additional sales while the customer is merely waiting and further provides a higher level of service to the customer." Paper No. 17, page 5. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

The Examiner has not presented a source for his motivation for modifying Bigari and Heady with Terranova. The Examiner simply states "because utilizing the customer display to advertise to customers will increase the likelihood of additional sales while the customer is merely waiting and further provides a higher level of service to the customer" as motivation for modifying Bigari and Heady with Terranova to display on a customer checkout accelerator a selection of special promotional merchandise that can be added to the sales transaction where some or all of the promotional merchandise can be made available through a hyperlink to one or more Internet web sites. The motivation to modify Bigari and Heady with Terranova

must come from one of three possible sources: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998). The Examiner has not provided any evidence that his motivation comes from any of these sources. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 15-23 and 37-45. *Id.*

Furthermore, the Examiner's conclusion of obviousness is based on improper hindsight reasoning. The Examiner's motivation "because utilizing the customer display to advertise to customers will increase the likelihood of additional sales while the customer is merely waiting and further provides a higher level of service to the customer" appears to have been gleaned from Appellants' disclosure. Any judgment on obviousness must not include knowledge gleaned from Appellants' disclosure. *In re McLaughlin*, 170 U.S.P.Q. 209, 212 (C.C.P.A. 1971). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 15-23 and 37-45. M.P.E.P. §2145.

As a result of the foregoing, Appellants respectfully assert that the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 15-23 and 37-45. M.P.E.P. §2143.

VIII. CONCLUSION

For the reasons noted above, the rejections of claims 1-5, 8, 11, 15-28, 33 and 37-45 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 1-45.

Respectfully submitted,

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CLAIMS APPENDIX

1. A method for accelerating sales transactions of customers in a retail store, comprising the acts of:
 - reading a customer payment card number at a customer checkout accelerator;
 - determining a preapproval amount for the sales transaction;
 - displaying the preapproval sales transaction amount to the customer on the customer checkout accelerator for acceptance;
 - transmitting the preapproval amount to an external card services system for approval; and
 - storing the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction.
2. The method for accelerating the sales transactions of customers in a retail store of claim 1 further comprising the act of transmitting the preapproval amount from the customer checkout accelerator to a store controller.
3. The method for accelerating the sales transactions of customers in a retail store of claim 2 further comprising placing an entry in a preapproval database if the external card services system approves the transaction amount.
4. The method for accelerating the sales transactions of customers in a retail store of claim 3 further comprising notifying a point of sales terminal of the approval amount.
5. The method for accelerating the sales transactions of customers in a retail store of claim 1 further comprising the act of determining if the payment card is one or more of a credit card, a debit card, a customer loyalty card, an electronic/Internet wallet, or an electronic gift certificate.
6. The method for accelerating the sales transactions of customers in a retail

store of claim 5 wherein if the payment card is a customer loyalty card, determining a preapproval amount that is based on an actual purchase history for the customer.

7. The method for accelerating the sales transactions of customers in a retail store of claim 5 wherein if the payment card is a credit or debit card, determining a preapproval amount that is based on an average customer purchase amount for credit and debit transactions on a store wide basis.

8. The method for accelerating the sales transactions of customers in a retail store of claim 1 further comprising the act of manually entering a specific preapproval amount by the customer.

9. A method for accelerating sales transactions of customers in a retail store, comprising the acts of:

- reading a customer payment card number at a customer checkout accelerator;
- determining a preapproval amount for the sales transaction;
- displaying the preapproval sales transaction amount to the customer on the customer checkout accelerator for acceptance;
- transmitting the preapproval amount to an external card services system for approval;
- storing the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction;
- scanning the customer payment card at a point of sales terminal;
- determining if there is an entry for the customer in the preapproval cache; and
- resuming the sales transaction at the point of sale terminal.

10. The method for accelerating the sales transactions of customers in a retail store of claim 9 wherein the act of resuming the sales transaction comprises the acts of:

comparing the actual sales transaction amount with the preapproval amount;
updating a preapproval database with the actual sales transaction amount; and
releasing the difference between the preapproval amount and the actual sales transaction amount in the preapproval database.

11. The method for accelerating the sales transactions of customers in a retail store of claim 1 further comprising the act of printing a sales transaction receipt and a credit or debit voucher.

12. The method for accelerating the sales transactions of customers in a retail store of claim 9 wherein if there is no entry for the customer in the preapproval cache, retrieving the preapproval amount from a preapproval database on a store controller file server.

13. The method for accelerating the sales transactions of customers in a retail store of claim 10 wherein the act of resuming the sales transaction includes the acts of:

scanning the items selected by the customer for purchase during the sales transaction;

determining a subtotal purchase amount after each item is scanned;

determining if the subtotal amount exceeds the preapproval amount; and

dynamically requesting an additional amount for approval during the sales transaction, if the subtotal amount exceeds the preapproval amount.

14. The method for accelerating the sales transactions of customers in a retail store of claim 13 further comprising the acts of:

transmitting an additional preapproval amount from the external card services system;

updating the preapproval cache with the additional preapproval amount if

approved; and

notifying the operator of the point of sale terminal if the additional preapproval amount is denied.

15. The method for accelerating the sales transactions of customers in a retail store of claim 1 further comprising the act of displaying on the customer checkout accelerator a selection of special promotional merchandise that can be added to the sales transaction, wherein some or all of the promotional merchandise can be made available through a hyperlink to one or more Internet web sites.

16. The method for accelerating the sales transactions of customers in a retail store of claim 15 further comprising the acts of:

creating a record of any additional items added to the sales transaction;

appending the additional items record to a preapproval database entry for the sales transaction.

17. The method for accelerating the sales transactions of customers in a retail store of claim 16 further comprising the act of reading the additional items record into a sales transaction record at a point of sale terminal.

18. The method for accelerating the sales transactions of customers in a retail store of claim 17 further comprising the acts of updating a vendor-based tracking database to bill the vendor for displaying a vendor advertisement on the customer checkout accelerator when the approval from the external card services system is approved.

19. The method for accelerating the sales transactions of customers in a retail store of claim 1 further comprising the acts of:

configuring a selection of additional categories of items to be displayed on the

customer checkout accelerator based on customer preferences wherein some or all of the categories of items can be made available through a hyperlink to one or more Internet web sites; and

storing the category selections in a customer loyalty database that is maintained by the retail store.

20. The method for accelerating the sales transactions of customers in a retail store of claim 19 further comprising the act of displaying on the customer checkout accelerator a selection of special promotional merchandise in the customer selected categories that can be added to the sales transaction wherein some or all of the promotional merchandise can be made available through a hyperlink to one or more Internet web sites.

21. The method for accelerating the sales transactions of customers in a retail store of claim 20 further comprising the acts of:

creating a record of any additional items added to the sales transaction;

appending the additional items record to a preapproval database entry for the sales transaction.

22. The method for accelerating the sales transactions of customers in a retail store of claim 21 further comprising the act of reading the additional items record into a sales transaction record at a point of sale terminal.

23. The method for accelerating the sales transactions of customers in a retail store of claim 22 further comprising the acts of updating a vendor-based tracking database to bill the vendor for displaying on the customer checkout accelerator a vendor advertisement for merchandise that can be made available through a hyperlink to the vendor's Internet web site when the approval from the external card services system is approved.

24. A computer readable medium containing a computer program product for accelerating sales transactions of customers in a retail store, comprising:

program instructions that read a customer payment card number at a customer checkout accelerator;

program instructions that determine a preapproval amount for the sales transaction;

program instructions that display the preapproval sales transaction amount to the customer on the customer checkout accelerator for acceptance;

program instructions that transmit the preapproval amount to an external card services system for approval; and

program instructions that store the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction.

25. The computer program product for accelerating the sales transactions of customers in a retail store of claim 24 further comprising program instructions that transmit the preapproval amount from the customer checkout accelerator to a store controller.

26. The computer program product for accelerating the sales transactions of customers in a retail store of claim 25 further comprising program instructions that place an entry in a preapproval database if the external card services system approves the transaction amount.

27. The computer program product for accelerating the sales transactions of customers in a retail store of claim 26 further comprising program instructions that notify a point of sales terminal of the approval amount.

28. The computer program product for accelerating the sales transactions of

customers in a retail store of claim 27 further comprising program instructions that determine if the payment card is one or more of a credit card, a debit card, a customer loyalty card, an electronic/Internet wallet or an electronic gift certificate.

29. The computer program product for accelerating the sales transactions of customers in a retail store of claim 28 further comprising program instructions that determine a preapproval amount that is based on an actual purchase history for the customer if the payment card is a customer loyalty card.

30. The computer program product for accelerating the sales transactions of customers in a retail store of claim 28, further comprising program instructions that determine a preapproval amount that is based on an average customer purchase amount for credit and debit transactions on a store wide basis if the payment card is a credit or debit card.

31. A computer readable medium containing a computer program product for accelerating sales transactions of customers in a retail store, comprising:

- program instructions that read a customer payment card number at a customer checkout accelerator;

- program instructions that determine a preapproval amount for the sales transaction;

- program instructions that display the preapproval sales transaction amount to the customer on the customer checkout accelerator for acceptance;

- program instructions that transmit the preapproval amount to an external card services system for approval;

- program instructions that store the approval amount in a preapproval cache at a point of sales terminal for use in completing the sales transaction;

- program instructions that scan the customer payment card at a point of sales terminal;

program instructions that determine if there is an entry for the customer in the preapproval cache; and

program instructions that resume the sales transaction at the point of sale terminal.

32. The computer program product for accelerating the sales transactions of customers in a retail store of claim 31 wherein the program instructions that resume the sales transaction comprise:

program instructions that compare the actual sales transaction amount with the preapproval amount;

program instructions that update a preapproval database with the actual sales transaction amount; and

program instructions that release the difference between the preapproval amount and the actual sales transaction amount in the preapproval database.

33. The computer program product for accelerating the sales transactions of customers in a retail store of claim 24 further comprising program instructions that print a sales transaction receipt and a credit or debit voucher.

34. The computer program product for accelerating the sales transactions of customers in a retail store of claim 31, further comprising program instructions that retrieve the preapproval amount from a preapproval database on a store controller file server if there is no entry for the customer in the preapproval cache.

35. The computer program product for accelerating the sales transactions of customers in a retail store of claim 32 wherein the program instructions that resume the sales transaction further include:

program instructions that scan the items selected by the customer for purchase during the sales transaction;

program instructions that determine a subtotal purchase amount after each item is scanned;

program instructions that determine if the subtotal amount exceeds the preapproval amount; and

program instructions that dynamically request an additional amount for approval during the sales transaction, if the subtotal amount exceeds the preapproval amount.

36. The computer program product for accelerating the sales transactions of customers in a retail store of claim 35 further comprising:

program instructions that transmit an additional preapproval amount from the external card services system;

program instructions that update the preapproval cache with the additional preapproval amount if approved; and

program instructions that notify the operator of the point of sale terminal if the additional preapproval amount is denied.

37. The computer program product for accelerating the sales transactions of customers in a retail store of claim 24 further comprising program instructions that display on the customer checkout accelerator a selection of special promotional merchandise that can be added to the sales transaction, wherein some or all of the promotional merchandise can be made available through a hyperlink to one or more Internet web sites.

38. The computer program product for accelerating the sales transactions of customers in a retail store of claim 37 further comprising:

program instructions that create a record of any additional items added to the sales transaction;

program instructions that append the additional items record to a preapproval

database entry for the sales transaction.

39. The computer program product for accelerating the sales transactions of customers in a retail store of claim 38 further comprising program instructions that read the additional items record into a sales transaction record at a point of sale terminal.

40. The computer program product for accelerating the sales transactions of customers in a retail store of claim 39 further comprising program instructions that update a vendor-based tracking database to bill the vendor for displaying a vendor advertisement on the customer checkout accelerator for merchandise that can be made available through a hyperlink to the vendor's Internet web site when the approval from the external card services system is approved.

41. The computer program product for accelerating the sales transactions of customers in a retail store of claim 24 further comprising:

program instructions that configure a selection of additional categories of items to be displayed on the customer checkout accelerator based on customer preferences, wherein some or all of the categories of items can be made available through a hyperlink to one or more Internet web sites; and

program instructions that store the category selections in a customer loyalty database that is maintained by the retail store.

42. The computer program product for accelerating the sales transactions of customers in a retail store of claim 41 further comprising program instructions that display on the customer checkout accelerator a selection of special promotional merchandise in the customer selected categories that can be added to the sales transaction, wherein some or all of the promotional merchandise can be made available through a hyperlink to one or more Internet web sites.

43. The computer program product for accelerating the sales transactions of customers in a retail store of claim 42 further comprising:

program instructions that create a record of any additional items added to the sales transaction;

program instructions that append the additional items record to a preapproval database entry for the sales transaction.

44. The computer program product for accelerating the sales transactions of customers in a retail store of claim 43 further comprising program instructions that read the additional items record into a sales transaction record at a point of sale terminal.

45. The computer program product for accelerating the sales transactions of customers in a retail store of claim 44 further comprising program instructions that update a vendor-based tracking database to bill the vendor for displaying on the customer checkout accelerator a vendor advertisement for merchandise that can be made available through a hyperlink to the vendor's web site when the approval from the external card services system is approved.

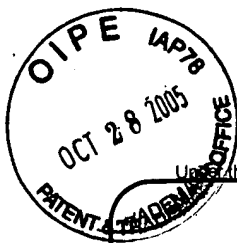
EVIDENCE APPENDIX

No evidence was submitted pursuant to §§1.130, 1.131, or 1.132 of 37 C.F.R. or of any other evidence entered by the Examiner and relied upon by Appellants in the Appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings to the current proceeding.

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Remarks

Applicants believe there are no fees due as Applicants are filing a Replacement Appeal Brief consolidating all previous Appeal Briefs in conformity with 37 CFR 41.37 at the Examiner's request. Should any fees be required, the Commissioner is hereby authorized to charge deposit account no. 50-0563.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Winstead Sechrest & Minick P.C.		
Signature			
Printed name	Robert A. Voigt, Jr.		
Date	10/26/2005	Reg. No.	47,159

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